

STATE OF NORTH DAKOTA
BEFORE THE COMMISSIONER OF INSURANCE

In the Matter of)	
)	
Diane K. Cottingham,)	CEASE AND DESIST ORDER
dba Cottingham Insurance Agency,)	AND NOTICE OF
NPN 657089,)	OPPORTUNITY FOR HEARING
)	
Respondent.)	

TO: Diane K. Cottingham, P.O. Box 1046, Underwood, ND 58576

Commissioner of Insurance Jim Poolman (hereinafter "Commissioner") has determined as follows:

1. N.D. Cent. Code § 26.1-01-03.1 authorizes the Commissioner to issue an Order to cease and desist when it appears that any person is or has engaged in an act or practice which violates or may lead to a violation of the North Dakota Century Code.

2. N.D. Cent. Code Chapter 26.1-26 governs the qualifications and procedures for the licensing of insurance agents and insurance companies within the State of North Dakota.

3. Diane K. Cottingham, dba Cottingham Insurance Agency, NPN 657089 (hereinafter "Respondent"), is presently and has been at all times pertinent to this action a licensed North Dakota insurance agent.

4. N.D. Cent. Code § 26.1-02-05 states, in part:

An insurance company may not transact insurance business in this state, as set forth in section 26.1-02-06, without a certificate of authority from the commissioner.

5. N.D. Cent. Code § 26.1-04-03 states, in part:

The following are unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

...

12. Misrepresentation in insurance applications. Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, insurance producer, or individual.

6. N.D. Cent. Code § 26.1-26-13.1(1) states:

An insurance producer may not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer. An insurance producer who is not acting as an agent of an insurer is not required to become appointed.

7. N.D. Cent. Code § 26.1-26-42 states, in part:

The commissioner may suspend, revoke, place on probation, or refuse to continue or refuse to issue any license issued under this chapter if, after notice to the licensee and hearing, the commissioner finds as to the licensee any of the following conditions:

...

6. In the conduct of affairs under the license, the licensee has used fraudulent, coercive, or dishonest practices, or has shown oneself to be incompetent, untrustworthy, or financially irresponsible.
7. A misrepresentation of the terms of any actual or proposed insurance contract.

...

10. An improper withholding of, misappropriating of, or converting to one's own use any moneys belonging to policyholders, insurers, beneficiaries, or others received in the course of one's insurance business.

8. The Commissioner of Insurance for the State of North Dakota has come into information which alleges that Respondent has knowingly and intentionally engaged in the conduct of deceit and fraud against residents of the State of North Dakota in her actions of misappropriating and converting to her own use premium moneys belonging to several insurance clients and has failed to remit any of the premium moneys to the appropriate insurance companies.

9. Specifically, throughout January 2004 to March 2007, Respondent received premium payments from:

- Farmers Union Oil Company of Hazen (Cenex)
- Farmers Union Oil Company of Beulah (Cenex)
- Cenex of Bismarck, Mandan, Sterling, Dickinson
- Mercer Morton Co-op Transport

hereinafter referred to as "The Companies". Respondent misappropriated the premiums and converted the moneys to her own personal use, failed to place insurance with a properly licensed insurance company, provided false and misleading documents purporting to show that insurance had been placed with a properly licensed insurance company, paid claims from her own personal agency account, and engaged in other deceitful acts and practices that misled The Companies into believing that The Companies were insured with a properly licensed insurance company.

10. Respondent also represented to The Companies that she was properly appointed and authorized to act on behalf of specific licensed insurance companies when in fact she was not.

11. Further, Respondent knowingly and intentionally operated as an insurance company by accepting premiums, assuming risk and paying claims without holding a valid license to operate as an insurance company and represented herself to The Companies that she was a properly licensed and appointed agent of specific insurance companies.

12. Respondent's conduct constitutes violations of N.D. Cent. Code §§ 26.1-02-05, 26.1-04-03(12), 26.1-26-13.1(1), and 26.1-26-42(6), (7) and (10).

NOW, THEREFORE, IT IS HEREBY ORDERED pursuant to N.D. Cent. Code § 26.1-01-03.1 that Respondent shall immediately **CEASE AND DESIST** from soliciting, transacting, or otherwise engaging in the business of insurance with residents of the State of North Dakota.

RESPONDENT IS FURTHER ORDERED to **CEASE AND DESIST** from withdrawing moneys from any banking account into which the premiums received from The Companies were deposited, whether the withdrawal is for her personal salary, loan, dividend or any other purpose.

IT IS FURTHER ORDERED pursuant to N.D. Cent. Code § 26.1-01-03.1 that Respondent may make a written request for a hearing on this matter within 30 days of the date of this Order.

If the Respondent fails to request a hearing in writing within 30 days after being served with a copy of this Cease and Desist Order, the Commissioner shall make the Cease and Desist Order permanent, as the facts require.

DATED this 24th day of March, 2007.



Jim Poolman
Commissioner
N.D. Insurance Department
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Bismarck, ND 58505
(701) 328-2440